

Application Number : 10/748,024
Applicant : Alexander H. Little
Filed : 30 December 2003
T.C./A.U. : 2614
Examiner : Monikang, George C.

Confirmation Number: 6524

Docket Number : APL-P3231
Customer No. : 62096

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant respectfully requests a pre-appeal brief conference to review the matters identified below. More specifically, Applicant requests a review of the rejection of the above-referenced application under 35 U.S.C § 102(e) as being unpatentable over Armitage, as well as the rejection of the above-referenced application under 35 U.S.C. § 103(a) as being obvious based on Armitage in view of Applicant's admitted prior art.

I. STATUS OF APPLICATION

In the Official Action mailed on **08 December 2008** (hereinafter "1208 OA"), the Examiner reviewed claims 1-21. Examiner rejected claims 1, 7-8, 10, 17-21, 26-29, 30-31, and 33 under 35 U.S.C. § 102(e) as being unpatentable over Armitage. Examiner rejected claims 11-12, 23-25, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Armitage and applicants admitted prior art (hereinafter AAPA).

In the Advisory Action mailed **06 March 2009** (hereinafter "0306 AA"), Examiner maintained the same rejections.

II. REMARKS AND ARGUMENTS

Applicant respectfully disagrees with the above-described rejections. Applicant points out that the rejection of independent claims 1, 10, 19, and 26 under 35 U.S.C. § 102(e) is improper because Armitage does not anticipate all of the claim limitations. Applicant further points out that the rejection of independent claim 23 under 35 U.S.C. § 103(a) is improper because Examiner has failed to explain how Armitage and AAPA render obvious the claim limitations. Applicant addresses these points below.

The Prior Art does not Anticipate the Claim Limitations

In order to anticipate a claim, each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference (see MPEP § 2131). Examiner has failed to establish a case of anticipation under 35 U.S.C. § 102(e) because the cited reference does not describe all of the claim limitations of independent claims 1, 10, 19, and 26 in the instant application. More specifically, Armitage discloses a programming interface device which **detects a cable type** for a cable connector of a hearing aid, whereas the present invention provides a self-identifying microphone that **transmits data about itself** through an I/O port. Moreover, the microphone of the present invention **includes a circuit that transmits data** about the microphone to an external device through at least one electrical contact.

In an Office Action Response filed on 2 February 2009 (hereinafter “0202 OAR”), Applicant analyzed the distinctions between the hearing aid in Armitage and the self-identifying microphone in the present invention. Applicant pointed out that the Armitage cable connector identifies the **cable type** of the connector. Furthermore, Applicant pointed out that the cable connector is not a part of the hearing aid and therefore **the hearing aid does not transmit data about itself to an external device**.

More specifically, the cable connector is a part of the programming interface device, such that the programming interface device identifies the cable type of the connector to determine if the programming interface device is programmed correctly, without any transfer of data from the hearing aid about the hearing aid's properties. Armitage nowhere discloses a circuit within a hearing aid that transmits data about the hearing aid to an external device. Please see pages 9-11 of the 0202 OAR for Applicant's complete argument.

In an advisory action mailed 06 March 2009, (hereinafter "0306 AA"), Examiner averred that "The amendments as claimed do not limit the claim invention enough to overcome the prior art" (see 0306 AA, page 2). Applicant respectfully disagrees. The amendments presented in the 0202 OAR clarify that the microphone of the present invention **transmits** data about the microphone to an external device through an electrical contact. In effect, the microphone of the present invention does not require an external programming interface device or a cable connector to identify the microphone and transmit data about the microphone to an external device.

The Armitage system is limited to a hearing aid **programming system** which **detects a cable type** for a cable connector to a hearing aid. Armitage nowhere discloses a **circuit within a microphone** which **transmits** data about the microphone to an external device through an electrical contact.

Hence, Applicant avers that the rejection of claims 1, 10, 19, 23, and 26 under 35 U.S.C. § 102(e) using Armitage is improper because Armitage does not disclose claim limitations described by the Examiner. Applicant therefore respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 102(e).

The Gap between the Prior Art and the Claimed Invention is so Great as to Render the Claims Nonobvious to One Reasonably Skilled in the Art

When establishing a prima facie case when rejecting claims under 35 U.S.C. § 103, Examiner's cited prior art must cover the claimed subject matter (see MPEP § 2141(II)(A)(1)). Where the prior art does not cover the claimed subject matter, Examiner is required to explain the differences:

The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, **Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art;** and

The gap between the prior art and the claimed invention may not be so great as to render the claim nonobvious to one reasonably skilled in the art (see MPEP § 2141(III)).

In an Office Action mailed on 8 December 2008 (hereinafter "1208 OA"), Examiner averred that (emphasis added):

"Claims 11-12, 23-25, & 32 are rejected under 35 U.S.C. 103(a) as being unpatentable **over Armitage as applied to claim 10** above, in view of applicants admitted prior art (AAPA, para 0003)." (See 1208 OA, page 8, paragraph 9).

Examiner has failed to establish prima facie obviousness because Examiner has failed to explain fundamental differences between the cited Armitage and AAPA prior art and independent claim 23 in the instant application. Specifically, Examiner has failed to explain how Armitage's disclosure of the above-described programming interface device and AAPA's disclosure of an external device render obvious the present invention's self identifying microphone which includes a **circuit within the microphone that transmits data about the microphone** to an interface unit. Applicant respectfully notes that AAPA par. [0003] discloses an external device for increasing the audio fidelity of a microphone signal, which is fundamentally distinct

from the self-identifying microphone of the present invention. Furthermore, the Armitage system is limited to a hearing aid **programming system** which **detects a cable type** for a cable connector to a hearing aid. Armitage and AAPA par. [0003] nowhere disclose a **circuit within a microphone** which **transmits data about the microphone** to an interface unit.

Hence, Applicant avers that the rejection of claim 23 under 35 U.S.C. § 103(a) using Armitage and AAPA is improper because the cited references do not render obvious the claim limitations described by the Examiner. Applicant therefore respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 103(a).

CONCLUSION

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

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Date: 8 April 2009

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